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06/28/2006

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EXAMINER

YU, GINA C

ART UNIT

PAPER NUMBER

1617

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Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on May 12, 2006 has been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7-13, 15-20, 22, 24, 25, 30-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 recites "low-oil absorbing". The metes and bounds of the scope of the claim is not clear because there is no standard as to determine what oil absorption level is considered "low" in this case.

Furthermore, claim 7 is vague and indefinite because the limitation of the amount of the crosslinked silicone elastomer, the spherical inorganic particles and the ratio of the two particles present in the claimed composition is unclear. While claim 7 is limited to specific amount of the particles and the ratio in lines 2, 3, and 6, the claim again recites that the amount of the crosslinked silicone elastomer is "in an amount sufficient to fill in fine lines or wrinkles present on a

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skin surface upon which the composition is applied”, the spherical particles are “in an amount sufficient to provide an optical diffusing effect on said surface”, and the ratio of the two particles is “selected so that the skin surface reflects light more evenly and feels smoother than said surface prior to application of the composition”. It is not clear whether the latter recitation is part of the claim limitation since the claim already recites specific numeric weight range and ratio. See MPEP § 2173.05(d).

The remaining claims are rejected as depending on indefinite base claim.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 7-13, 15-20, 22, 24, 25, and 30-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rouquet et al. (US 6258345 B1) in view of Manufacturing Chemist (Black Helps Hide Lines, June 1, 1999) and Anselmann (SPC Soap, Perfumery, and Cosmetics).

Rouquet et al. describe a topical composition comprising crosslinked elastomeric organopolysiloxane and spherical organic polymeric particles with a particle diameter of less than 10 microns in a liquid fatty phase. See abstract. The reference teaches using the elastomeric organopolysiloxane and the spherical particles in the amount of 2-20 % of the total weight of the composition. See col. 3, lines 46 – 58; instant claims 11-13. The recited weight amount of the crosslinked silicone elastomer is within this range. Claim 16 is met by the disclosure of the additional ingredients in col. 5, lines 15 – 38. The vehicles of

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the composition in claim 17 and the method of using the invention in claims 18-20 are described in Examples. The reference teaches formulating the invention in the form of emulsion and creams. See col. 3, lines 58 – 67.

The reference also fails to teach the inorganic spherical particles recited in Claim 7.

Manufacturing Chemist teaches that Ronasphere LDP from Merck, a cosmetic filler pigment comprising sphere silica coated with titanium dioxide and iron oxide, provides optical reduction of fine lines and the effect of making the skin appear smoother, more even and more natural looking. See Full Text. The particle size of the Ronasphere LDP pigments are less than 25 microns, and particle distribution of 4-7 microns. See Merck technical data. See the ratio limitation of instant claim 7.

Anselmann teaches that Ronasphere LDP can be used in the amount of 1-10 % in a cosmetic formulation. See p. 4, last par. See instant claims 12 and 13.

It is noted that the combined references do not specifically teach that Ronasphere LDP is non-porous and low oil absorbing. However, since both the present invention and the prior art particles are cosmetic spherical silica particles that camouflages lines and wrinkles of the skin upon application by optical diffusion, it is viewed that the prior art particles also have the same physical properties as recited in the instant claim, absent evidence to the contrary. See Manufacturing Chemist, p. 3, first full par., which teaches that Ronasphere LDP reduces the appearance of wrinkle by light diffusion.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the composition of Rouquet by incorporating the spherical silica as motivated by Manufacturing Chemist and Anselmann because the latter teaches that the spherical silica Ronasphere LDP provides optical reduction of fine lines and the effect of making the skin appear smooth, more even and natural looking. The skilled artisan would have had a reasonable expectation of successfully producing a cosmetic composition which provide wrinkle coverage because both Rouquet and Manufacturing Chemist teach emulsion cosmetic compositions.

Response to Arguments

Applicant's arguments filed on May 12, 2006 have been fully considered but they are not persuasive in part and moot in view of the withdrawal of a rejection in part.

Applicant's arguments with respect to claim rejection made over Rouquet in view of Manufacturing Chemist and Anselmann are unpersuasive. Applicant asserts that the examiner's proposed modification is improper because substituting spherical organic particles of Rouquet with the inorganic particles, Ronasphere in this case, would affect the stability of the Rouquet composition. However, the present rejection is made on the ground that it would have been obvious to modify the Rouquet composition by adding the Ronasphere particles, not by replacing the organic particles with them. Thus there should be no apparent issue of instability of the modified composition that would have negate

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the motivation for a skilled artisan to combine the teachings of the cited references.

Applicant's arguments with respect to the claim rejection made over Rouquet in view of LaFleur are moot, as the rejection is withdrawn in view of the claim amendment made by applicants.

Conclusion

No claims are allowed.

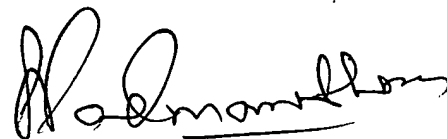
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605. The examiner can normally be reached on Monday through Friday, from 7:00AM until 4:30 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Gina Yu
Patent Examiner



SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER